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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Barkley & Associates, Inc., a California Corporation,
Plaintiff,
v.
Quizlet, Inc., a Delaware corporation
registered in California
Defendants.

Case No. 2:24-cv-5964

- (1) Trademark Infringement [15 U.S.C. § 1114]
- (2) Copyright Infringement [17 U.S.C §§ 101 *et seq.*]
- (3) Lanham Act Unfair Competition [15 U.S.C. § 1125(a)]
- (4) Common Law Trademark Infringement
- (5) Unfair Business Practices [Cal. Bus. & Prof. Code § 17200]

Demand for Jury Trial

FIRST CLAIM FOR RELIEF – TRADEMARK INFRINGEMENT

[15 U.S.C. § 1114]

A. INTRODUCTION

1. Plaintiff Barkley & Associates Inc. (“Barkley”) specializes in creating test preparation materials for graduate nursing students studying to become certified nurse practitioners. Barkley creates a variety of study materials including printed study manuals, practice questions, digital study materials, recorded courses and more. Barkley meticulously protects all its study materials by registering them with the United States Copyright Office. Defendant Quizlet Inc. (“Quizlet”) hosts copies of Barkley study materials and distributes them without a license to users in California. The

1 United States, and all over the world. Quizlet also puts its trademark and materials
 2 over Barkley materials and invites users to download materials off the Quizlet web-
 3 site . These illegal sales have resulted in not only lost profits to Barkley but have
 4 damaged Barkley's reputation. Because Barkley registered the copied works before
 5 Quizlet began Quizlet's infringement, Barkley is entitled to statutory damages of at
 6 least \$1,080,000. These statutory damages will compensate Barkley for (1) lost sales
 7 (2) a reasonable royalty for all infringed copies (3) corrective advertising to educate
 8 consumers on the counterfeits still floating around e-commerce stores.

9 **B. SUBJECT MATTER JURISDICTION**

10 2. Barkley is a California corporation registered to do business in California
 11 with a business address at 8060 Melrose Avenue, Suite 230, Los Angeles, CA 90046.
 12 Barkley also provides instructors around the country for live courses including in Illi-
 13 nois, Ohio, and 10 other states around the United States.

14 3. This action arises under the trademark laws of the United States, 15 U.S.C.
 15 § 1051, *et seq.*, and under the copyright laws of the United States, 17 U.S.C. § 501 *et*
 16 *seq.*, and California and statutory unfair competition under California law. This Court
 17 has subject matter jurisdiction over this action under 15 U.S.C. § 1121 and 28 U.S.C.
 18 §§ 1331 and 1338(a) and (b) because Plaintiff's federal claims arise under the Lan-
 19 ham Act, 15 U.S.C. § 1051 *et seq.* and the Copyright Act 17 U.S.C. § 501 *et seq.* This
 20 Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 (federal question),
 21 1338 (copyrights and trademarks), and 15 U.S.C. § 1121 (Lanham Act and unfair
 22 competition). This Court has subject matter jurisdiction over Plaintiff's related Cali-
 23 fornia claims (Fifth and Sixth Claims for Relief) under 28 U.S.C. §§ 1338(b) and
 24 1367 because the state law claims are claims of unfair competition when joined with
 25 a substantial and related claim under the copyright or trademark laws.

26 **C. PERSONAL JURISDICTION AND VENUE**

27 4. This Court has personal jurisdiction over Quizlet because Quizlet purpose-
 28 fully directs its activities toward and conducts business with consumers in the State of

1 California and in this district. Quizlet conducted business in the jurisdiction of the
 2 United States District Court for the Central District of California by offering for sale,
 3 advertising for sale, and selling infringing goods in Los Angeles, Ventura, and Santa
 4 Barbara counties, including soliciting California consumers to buy infringing product
 5 via social media websites.

6 5. This court has personal jurisdiction over Quizlet because Quizlet offers
 7 goods for sale in this District, through the advertisement, offer to sell, sale, and ship-
 8 ment of infringing goods into Los Angeles, Ventura and Santa Barbara counties, Cali-
 9 fornia.

10 6. Quizlet also keeps offices and does business out of California. Quizlet's
 11 own incorporation documents list a California address at 123 Townsend Street, 6th
 12 Floor, San Francisco, California 94107.

13 **D. FACTS**

14 7. Barkley creates test preparation materials for students studying to become
 15 nurse practitioners. These study materials come in the form of home courses, study
 16 manuals, textbooks, recordings of classes, and other study materials. The materials
 17 come in both digital and print form. A sampling of Barkley's materials is reproduced
 18 below:



The screenshot shows a course listing for a live course in Chicago, IL. At the top, a green banner reads "What Makes our **Live Courses** Different and **Exactly What You Need?**" with a "CLICK HERE FOR MORE INFO" button. Below the banner, there's a photo of a group of people in a classroom setting. To the left, a thumbnail image shows a night view of a city skyline with lit buildings. On the right, course details are listed: City: Chicago, IL; Date: August 27-28, 2024; Hotel: Hilton Chicago/Magnificent Mile Suites. Below this, a "Why Choose Audio Now?" button is shown, along with a dropdown menu for "Choose your Audio add-on". The price is listed as \$489.50, with an "Add to cart" button. At the bottom, there are tabs for "Description", "Sample", "Course Highlights", "Audio Options", "Venue", and "Terms". Other course features listed include 21 Contact Hours, Extensive Course Manual, Supplemental Videos, and 100-item DRT.

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8060 Melrose Ave., Suite 230
Los Angeles, CA 90046*"Providing the Nation's BEST Nurse Practitioner
Continuing Education Courses!"***FAMILY NURSE PRACTITIONER****ADULT-GERONTOLOGY PRIMARY CARE CONTENT**

19. Eyes, Ear, Nose, and Throat and Upper Respiratory Disorders	156
20. Integumentary Disorders	168
21. Lower Respiratory Disorders	186
22. Endocrine Disorders	193
23. Gastrointestinal Disorders	201
24. Gynecologic Concerns Issues in Men's Health	212
25. Sexually Transmitted Infections/Diseases	234
26. Hematologic and Oncologic Disorders	244
27. Musculoskeletal Disorders	251
28. Psychosocial Disorders	262
29. Neurological Disorders	268
30. Useful Points	277
31. Herbal Agents	284
32. Instructions for Online Streaming Video (OSV) Chapters	286
33. Cardiovascular Disorders	289
34. Sexually Transmitted Infections (Pediatric) (OSV)	299
35. Contraceptive Options (OSV)	305
36. Obstetrics and Pregnancy Pearls (OSV)	320
37. Evidence-Based Cultural Considerations (OSV)	330
38. Practice Issues, Ethical and Legal Principles (OSV)	335
39. References	361

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Growth and Development
BARKLEY & ASSOCIATES
FAMILY NURSE PRACTITIONER
CERTIFICATION REVIEW/CLINICAL UPDATE CONTINUING EDUCATION COURSE

GROWTH AND DEVELOPMENT

1. Learning Objectives
 - a. Describe the multiple domains of growth and development
 - b. Articulate major theories of growth and development
 - c. Discuss major growth and development landmarks from birth to adolescence
 - d. Revise health promotion principles across the various development stages
 - i. Describe *expected developmental progression* for the pediatric lifespan
 - ii. Discuss *anticipatory guidance* measures for children at various developmental stages
 - iii. Identify developmental warning signs or **RED FLAGS**
2. Domains of Growth and Development
 - a. Three primary domains:
 - i. Physical domain
 - ii. Cognitive domain
 - iii. Psychosocial domain
 - b. Disturbances of any of these may alter growth and development
3. Guidelines: The American Academy of Pediatrics' (AAP) *Bright Futures: Guidelines of Health Supervision of Infants, Children, and Adolescents*

The Physical Domain

1. Physical growth occurs in an orderly, predictable sequence; direction of growth as follows:
 - a. Cephalo→ Caudal
 - b. Proximal→ Distal
 2. Individual variability, genetic characteristics, ethnicities, and cultural practices all influence physical development
 3. Sequential measurements are important
- Nutritional Factors**
1. Breastfeeding
 - a. Is the perfect food for humans; cannot be duplicated
 - b. Decreases illness in infants
 - c. Maternal antibodies are transferred to infants
 - d. Decreases gastrointestinal (GI) problems such as GERD
 - e. Decreases allergies as breast milk contains anti-inflammatory agents to decrease atopy; fewer allergies in children who are breastfed
 - f. Breastfeeding during painful procedures provides analgesia
 - g. The longer the mother breastfeeds, the lower the risk of obesity in the child; independent of education and socioeconomic status

© 2023 Barkley & Associates, Inc.

8. Barkley protects its study materials not only by registering them with the US copyright office but by registering its federal trademarks which Barkley displays on all its materials, so consumers know the source of test preparation materials. Below are Barkley's trademarks that it displays on its materials:

US Trademark Registration No.	Trademark
6272223	
6270781	BARKLEY & ASSOCIATES

9. A sampling of Plaintiff's copyright works is produced below:

Title	Copyright No.
Adult-Gerontology Acute Care Nurse Practitioner ACNP	TX0008198957

1	Adult-Gerontology Primary Care Nurse Practitioner AGPCNP	TX0008198960
2	Pediatric Primary Care Nurse Practitioner PNP	TX0008198960
3	Psychiatric Mental Health Nurse Practitioner PMHNP	TX0008199468
4	Women's Health Care Nurse Practitioner WHNP	TX0008204759
5	Family Nurse Practitioner	TX0008204763
6	Emergency Nurse Practitioner ENP	TX0008891069
7	Adult-Gerontology Acute Care Nurse Practitioner Audio Recordings	SR881728
8		
9	Adult-Gerontology Primary Care Nurse Practitioner Audio Recordings	SR881-483
10		
11	Pediatric Primary Care Nurse Practitioner Audio Recordings	SR880376
12		
13	Psychiatric Mental Health Nurse Practitioner Audio Recordings	SR881727
14		
15	Family Nurse Practitioner Audio Recordings	SR880380
16		
17	Women's Health Care Nurse Practitioner Audio Recordings	SR881545
18		
19	Emergency Nurse Practitioner Audio Recordings	SR881735
20		
21		
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16 10. On information and belief, Quizlet obtained copies of multiple different
 17 Barkley study resources.

18 11. On information and belief, Quizlet created unauthorized copies of Barkley
 19 study materials and invited users to visit the Quizlet site.

20 12. For example, Quizlet makes copies of Barkley study materials and plasters
 21 the Quizlet name on them an entices users to visit the Quizlet site instead of Barkley:
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The screenshot shows a Quizlet study document titled "Barkley live questions and answers". The document is categorized under "Business", "Humanities", "Mathematics", "Programming", and "Science". It has 16 pages and a rating of 4 stars. The first page displays a question about a patient with terminal cancer and breakthrough pain, with options A, B, C, and D. The sidebar on the right includes sections for "GET 24/7 STUDY HELP", "Most Popular Study Documents", and "SELL DOCUMENTS". The URL for the document is https://quizlet.com/_Bsf48g.

Barkley Live Questions
Study online at https://quizlet.com/_Bsf48g

1. Patient with terminal cancer c/o breakthrough pain. They have 1 hydromorphone ER tab daily.

A) Consider fentanyl patch
B) Increase dose
C) Start MSO4, stop hydromorphone
D) Refer to pain specialist: A) Fentanyl is good for sustained release to help breakthrough pain.

Do not refer for everything, need to do something.

2. 62 y.o. Korean male with chest pain 5/10 x2 hours. He is silent, not answering questions openly- why admit?

A) Ethnicity
B) Hesitancy to discuss situation
C) Gender
D) Age: A) Ethnicity

Koreans/Asians are stoic, do not like to admit pain *Cultural sensitivity*

3. Patient taking dispersal has elevated temp (39.4) diaphoretic, lethargic, "coming out of skin". What is priority?

A) IVF
B) Ice packs
C) Anti-nauseants
D) Antihistamines

Sign up to view the full document!

IVF to treat underlying cause of infection. Fever, tachycardia, tachypnea, hypotension syndrome- need to wash out

4. Patient has fever of unknown origin. Should you do?

A) Nothing until confirmed diagnosis
B) PO broad spectrum antibiotics
C) IV broad spectrum antibiotics
D) Tylenol: A) Nothing until confirmed diagnosis

Do not over treat! Need to know what you are treating first, need to do work up first.

5. All of the following are expected in a cluster headache EXCEPT:

A) Vise-like pain, apathy, inability to concentrate

Showing Page: 1/16

Barkley Live Questions
Study online at https://quizlet.com/_Bsf48g

B) Nasal decongestion, rhinorrhea, eye redness
C) Daily peri-orbital pain
D) Precipitated by alcohol: A) Vise-like pain, apathy, inability to concentrate

Those are for tension headache.

6. Patient is 3 days s/p ex lap for bowel perf secondary to ruptured diverticulitis. She is on a ventilator and slow to wean. Neuro intact and normal bowel sounds. What is the best method of nutritional support?

A) Small bore ND tube
B) Parenteral via central line
C) Parenteral via peripheral line
D) Gastrostomy tube: A) Small bore ND tube

7. You suspect your patient has cholelithiasis. Which order is most important at this time?

A) CT scan without contrast
B) Abdominal X-RAY
C) Ultrasound
D) GI consult: C) Ultrasound

Least invasive, least expensive

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1 13. Quizlet neither had permission nor a license to sell or make copies of any
2 Barkley study materials.

3 14. Quizlet also allows users to post copyright protected Barkley material on
4 the Quizlet website. A sampling of Quizlet's infringement can be found as Exhibit A
5 to this complaint.

6 15. Barkley's study materials also displayed multiple BARKLEY & ASSOCI-
7 ATES® and copyright protected © symbols. These symbols put Quizlet on notice that
8 Quizlet was infringing Barkley's trademark and copyrights.

9 16. Despite these warnings Quizlet actively pursued potential customers for
10 counterfeit goods by soliciting people to create Quizlet accounts and pay for study
11 materials.

12 17. On information and belief Quizlet obtained copies of multiple different
13 Barkley study resources.

14 18. Quizlet made and continues to make products that copy the total image of
15 Barkley's products, in violation of Barkley's intellectual property rights.

16 19. Barkley neither approved nor authorized Quizlet's use of Barkley's trade-
17 marks, trade dress or copyrights.

18 20. Quizlet's unsanctioned products are likely to confuse consumers, create a
19 false association between those products and Barkley's, and dilute Barkley's famous
20 brand.

21 21. Unless the Court permanently enjoins Quizlet from continuing to sell in-
22 fringing goods, the infringement will continue, and consumers will continue to be
23 confused.

24 22. Barkley has spent over two decades and significant money on advertising,
25 promoting, and marketing its test preparation goods. The BARKLEY & ASSOCI-
26 ATES brand and its test preparation goods have achieved widespread recognition and
27 fame throughout the United States.

1 23. Barkley is the owner of all the rights, title, and interest in the two registered
2 trademarks it affixes to all its goods.

3 24. Quizlet infringed Barkley's trademark by enticing nursing students to use
4 infringing materials posted to Quizlet rather than purchase legitimate Barkley prod-
5 ucts

6 25. Quizlet also infringed Barkley's marks when reproducing counterfeit docu-
7 ments. Quizlet chose to keep the Barkley registered trademark logo and BARKLEY
8 & ASSOCIATES® trademark on pages to fool consumers into thinking they were
9 purchasing legitimate Barkley products.

10 26. Barkley also owns extensive common law rights in the BARKLEY & AS-
11 SOCIATES marks for Barkley's goods and services. Barkley continuously used the
12 marks in interstate commerce in connection with the sale, distribution, promotion,
13 and advertising of genuine Barkley test preparation goods and services since
14 Quizlet's respective dates of first use.

15 27. Because of continuous and long-standing promotion, substantial sales, and
16 consumer recognition, Barkley has developed powerful trademarks rights and has
17 built substantial goodwill.

18 28. Having distinctive trademarks that are readily identifiable is an important
19 factor in creating and maintaining a market for Barkley's goods and services, and in
20 identifying Barkley and its brands, and in distinguishing Barkley's products from the
21 products of others.

22 29. Quizlet's use of Barkley's trademarks is likely to confuse, mislead, or de-
23 ceive potential consumers, purchasers, and the general buying public as to the source,
24 origin, sponsorship, or affiliation of Quizlet's goods with Barkley's and is likely to
25 cause people to believe erroneously that Quizlet's goods have been authorized, spon-
26 sored, approved, endorsed, or licensed by Barkley or that Quizlet is affiliated with
27 Barkley.

1 30. Quizlet's unauthorized use of Barkley's trademarks is trademark infringement
2 of Barkley's federally registered trademarks that has caused damage to Barkley
3 and the substantial business and goodwill embodied in Barkley's trademarks in violation
4 of 15 U.S.C. § 1114.

5 31. As a direct and proximate result of Quizlet's wrongful acts, Barkley suffered,
6 continues to suffer, and is likely to suffer damage to its trademarks, business
7 reputation, and goodwill that money cannot compensate. Unless enjoined, Quizlet
8 will continue to use Barkley's marks or confusingly similar marks and will cause irreparable
9 damage to Barkley, Barkley's trademarks, and to the business and goodwill they represent for which Barkley has no adequate remedy at law.

10 32. Barkley further has the right to recover from Quizlet the actual damages
11 Barkley sustained, is sustaining, or is likely to sustain because of defendant's wrong-
12 ful acts.

13 33. Upon information and belief, Quizlet obtained gains, profits, and ad-
14 vantages because of Quizlet's wrongful acts and will continue to do so in an amount
15 yet to be determined.

16 34. Quizlet's use of Barkley's trademarks and confusingly similar marks has
17 been intentional and willful. Quizlet's bad faith is evidenced by the egregious and
18 prominent use of Barkley's trademarks in connection with the sale and promotion of
19 competing goods and the extensive nature of the infringement. Because of the willful
20 nature of Quizlet's wrongful acts, Barkley is entitled to an award of treble damages
21 and increased profits under 15 U.S.C. § 1117.

22 35. Quizlet copied Barkley's marks because Quizlet knows that doing so
23 would garner attention and drive sales to it, confuse consumers and damage Barkley.

24 36. Because of Quizlet's infringement of Barkley's registered marks, Barkley
25 should be entitled, subject to the principles of equity, to recover (1) defendant's prof-
26 its, (2) any damages sustained by the plaintiff, and (3) costs. 15 U.S.C. § 1117(a).

1 37. Under 15 U.S.C. § 1117(a), Quizlet’s infringement of Barkley’s registered
2 trade dress lets this Court enhance the damages arising from infringement, up to three
3 times the actual damages, according to the circumstances. The circumstances here
4 warrant the enhancement to address a variety of undercompensated harm, including
5 difficulty in assessing damage and lost profits cannot address the ongoing harm, and
6 enhanced damages advance the cause of deterring Quizlet and others similarly situ-
7 ated from repeating this unfair and deceptive behavior.

8 38. Barkley is entitled to recover its attorney fees in exceptional cases under 15
9 U.S.C. § 1117(a). This case is exceptional considering the totality of the circum-
10 stances.

SECOND CLAIM FOR RELIEF - COPYRIGHT INFRINGEMENT

[17 U.S.C. § 501]

13 39. Barkley repeats the allegations of the previous paragraphs.

14 40. Barkley's test preparation materials including PDFs, written manuals, text-
15 books, study guides, practice tests, classroom recordings and all elements thereof in
16 all versions of development and production are all original works containing copy-
17 rightable subject matter for which copyright protection exists under the Copyright
18 Act, 17 U.S.C. § 101, et. seq.

19 41. Barkley owns copyrights on its various study materials which have been
20 registered with the United Stated Copyright Office. Copies of those Registration Cer-
21 tificates are attached as Exhibit B.

22 42. Barkley's certificates of copyright registrations were made within five
23 years of the first publication, so they are *prima facie* evidence of the validity of the
24 copyrights and of the facts stated in the certificates.

25 43. Quizlet directly infringed Barkley's exclusive rights in its registered works
26 in violation of 17 U.S.C. § 501.

1 44. Quizlet's sale of infringing testing material, including digital pdfs, in-
2 fringes Barkley's exclusive right to sell copies of the copyrighted work, and to pub-
3 licly display the copyrighted work under 17 U.S.C. § 106.

4 45. Quizlet infringed Barkley's exclusive rights granted to it as the lawful cop-
5 yright owner, and Quizlet unlawfully trespassed into Barkley's exclusive domain by
6 creating and selling unauthorized versions of Barkley's copyrighted work.

7 46. Quizlet sells products that copy Plaintiff's copyrighted materials. Quizlet
8 also publishes and displays, every day, throughout the internet on its website and on
9 the sites of Quizlet's authorized e-commerce re-sellers, labels that infringes Barkley's
10 copyrighted material. Quizlet violated at least one of the exclusive rights in 17 U.S.C.
11 § 106.

12 47. Quizlet seeks to capitalize, unilaterally, on Barkley's exclusive copyright
13 rights. Quizlet's infringing acts have caused and are likely to cause confusion, mis-
14 take, and deception among the relevant consuming public as to the source of
15 Quizlet's products and have deceived and are likely to deceive the relevant consum-
16 ing public into believing, mistakenly, that Quizlet's goods originate from, are associ-
17 ated, or affiliated with, or are otherwise authorized by Barkley.

18 48. Barkley suffered damages. Because of Quizlet's copyright infringement,
19 Quizlet earned profits Quizlet otherwise would not have earned.

20 49. On information and belief, Quizlet's infringing conduct alleged was and
21 continues to be willful and with full knowledge of Barkley's rights and has enabled
22 Quizlet illegally to obtain profit therefrom.

23 50. Barkley is entitled to the maximum statutory damages under 17 U.S.C.
24 § 504(c) for Quizlet's willful infringing conduct, and for such other amount as may
25 be proper under 17 U.S.C. § 504(c).

26 51. As a direct and proximate result of the Quizlet's infringing conduct, Bar-
27 kley sustained and will continue to sustain substantial, immediate, and irreparable in-

1 jury for which there is no adequate remedy at law. Unless Quizlet's infringing con-
2 duct is enjoined, Quizlet will continue to infringe the copyrighted work. Barkley is
3 entitled to permanent injunctive relief restraining and enjoining Quizlet's ongoing in-
4 fringing conduct.

5 52. Barkley is entitled to a rebuttable presumption of irreparable harm upon a
6 finding of trademark infringement under 15 U.S.C. § 1116.

7 53. Plaintiff is also entitled to statutory damages under 17 U.S.C. § 504 of at
8 least \$30,000 per infringing work. Because Quizlet's infringement was willful,
9 Quizlet is liable for statutory damages of \$150,000 under 17 U.S.C. § 504(c)(2).

10 **THIRD CLAIM FOR RELIEF FALSE DESIGNATION OF ORIGIN / UNFAIR
11 COMPETITION [15 U.S.C. § 1125(A)]**

12 54. Barkley repeats the allegations of the previous paragraphs.

13 55. Quizlet's unauthorized use of Barkley's trademarks, trade dress, and copy-
14 rights and confusingly similar versions constitutes a false designation of origin that is
15 likely to cause consumer confusion, mistake, or deception as to the origin, sponsor-
16 ship, or approval of Quizlet's competing test preparation goods by creating the false
17 and misleading impression that Quizlet's goods are produced by, authorized by, or
18 otherwise associated with Barkley.

19 56. As a direct and proximate result of Quizlet's wrongful acts, Barkley has
20 suffered, continues to suffer, and is likely to suffer damage to its brands, business
21 reputation, and goodwill that money cannot compensate. Unless enjoined, Quizlet
22 will continue to use Barkley's trademarks, trade dress, and copyrights and will cause
23 irreparable damage to Barkley and to the represented business and goodwill, for
24 which Barkley has no adequate remedy at law.

25 57. Quizlet's conduct constitutes false designation of origin and unfair compe-
26 tition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

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1 58. Barkley is also entitled to recover from Quizlet the actual damages Barkley
2 has sustained, is sustaining, and is likely to sustain because of Quizlet's wrongful
3 acts.

4 59. Because of the willful nature of Quizlet's wrongful acts, Barkley is entitled
5 to an award of treble damages and increased profits under 15 U.S.C. § 1117.

6 60. Because this is an exceptional case, Barkley is also entitled to recover its
7 costs of suit and its attorneys' fees under 15 U.S.C. § 1117.

8 61. Quizlet's unauthorized use of Barkley's trademarks, trade dress and copy-
9 rights is likely to deceive consumers as to the origin, source, sponsorship, or affiliation
10 of Quizlet's goods, and is likely to cause consumers to believe, contrary to fact,
11 that Quizlet's goods are sold, authorized, endorsed, or sponsored by Barkley, or that
12 Quizlet are affiliated with or sponsored by Barkley.

13 62. Quizlet's unauthorized use in commerce of Barkley's trademarks, trade
14 dress and copyrights constitutes use of a false designation of origin and unfair compe-
15 tition.

16 63. Upon information and belief, Quizlet's conduct is willful, is intended to,
17 and is likely to cause confusion, mistake, or deception as to Quizlet's affiliation, con-
18 nection, or association with Barkley.

19 64. Quizlet's conduct is causing immediate and irreparable harm and injury to
20 Barkley, and to its goodwill and reputation, and will continue to both damage Barkley
21 and confuse the public unless enjoined by this court. Barkley has no other adequate
22 remedy at law.

23 65. Barkley is entitled to, among other relief, injunctive relief, and an award of
24 actual damages, Quizlet's profits, enhanced damages and profits, reasonable attor-
25 neys' fees, and costs under Sections 34 and 35 of the Lanham Act, 15 U.S.C.
26 §§ 1116, 1117, together with prejudgment and post judgment interest.

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1 **FOURTH CLAIM FOR RELIEF – COMMON LAW TRADEMARK IN-**
2 **FRINGEMENT [CALIFORNIA COMMON LAW]**

3 66. Barkley repeats the allegations of the previous paragraphs.

4 67. Barkley owns the common law trademark rights to its trademarks and
5 source identifying marks.

6 68. Barkley has common law priority over Quizlet.

7 69. Consumers are being confused and misled by Quizlet's labels, which
8 Quizlet intentionally makes to copy Barkley's trademarks and divert away Barkley's
9 customers and create a false endorsement by Barkley.

10 70. Quizlet willfully infringed and continues to willfully infringe Barkley's
11 trademark Registration No. 6,272,223.

12 71. Quizlet willfully infringed and continues to willfully infringe Barkley's
13 trademark Registration No. 6,270,781.

14 72. Copies of those trademark Registration Certificates are attached as Exhibit
15 C.

16 73. Quizlet's acts are unfair competition under California common law.

17 74. Quizlet knew or should have known that Quizlet's infringement would
18 cause Barkley to lose business.

19 75. On information and belief, Quizlet's conduct was unlawful, unfair, and
20 fraudulent and has had the potential to cause confusion. Quizlet's conduct alleged
21 above constitutes unfair competition under California common law.

22 76. As a direct and proximate result of Quizlet's conduct, Barkley lost sales
23 that but for Quizlet's conduct it would have made. Barkley also suffered and will
24 continue to suffer damages to its business, reputation, and goodwill, in an amount to
25 be established.

26 77. As a direct and proximate result of Quizlet's wrongful acts, Barkley suf-
27 fered and will continue to suffer substantial financial losses and irreparable injury to

1 its business reputation and goodwill. Barkley's remedy at law is not adequate to com-
2 pensate for injuries Quizlet inflicted so Barkley is entitled to injunctive relief.

3 78. Because of Quizlet's wrongful acts, Barkley is and was, and will be de-
4 prived of the profits and benefits of its business relationships, agreements, and trans-
5 actions with its existing and prospective customers. Quizlet wrongfully obtained
6 those profits and benefits in an amount Barkley will prove.

7 79. On information and belief, Quizlet's acts as described above were done
8 with oppression, fraud and malice, entitling Barkley to an award of punitive damages,
9 in an amount to be established.

10 80. Quizlet's actions demonstrate an intentional, willful, and malicious intent
11 to misappropriate Barkley's efforts developing and marketing its products.

12 81. Quizlet acted in reckless disregard of Barkley's rights.

13 82. Quizlet knowingly copied Barkley's trade dress to engage in trade dress
14 and trademark infringement.

15 83. Barkley sent cease-and-desist letters to Quizlet before it sued, but Quizlet
16 refused to stop making and selling products composed of Barkley's copyrighted ma-
17 terials and affixed with Barkley's trademarks.

18 84. With no relent, Quizlet made, and continue to make infringing versions of
19 Barkley testing materials with a willful and conscious disregard of Barkley's rights.

20 85. Even after Plaintiff informed Quizlet that Quizlet infringing materials were
21 appearing on other websites, Quizlet continued to post Barkley materials.

22 86. Consumers are also becoming confused and reaching out to Barkley thank-
23 ing them for materials posted to Quizlet:

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From: Rebecca Martin <rebecca.martin@ua.edu>
Sent: Monday, April 24, 2023 11:35 AM
To: Thomas W Barkley Jr <barkley@npcourses.com>; Bianca (@ Barkley & Associates) <bianca@npcourses.com>
Subject: recent Test information

Dr. Barkley and Bianca,

I hope this email finds you well. I had a student email me today regarding the 3ps test taken last Friday. The student stated they were looking into the "Barkley 3ps" and stumbled upon "Quizlet". The student went on to say they reviewed the information on the site without knowing it was a direct quote from the '3ps'. I googled 3ps Barkley and saw "Quizlet" listed on the first page.

You may be aware of the site but I appreciate all of you help with preparing our students.

Sincerely,

Rebecca

Rebecca Martin | DNP, CRNP, FNP-BC
Clinical Assistant Professor/
Family Nurse Practitioner Program Coordinator

Capstone College of Nursing
The University of Alabama
650 University Boulevard, East,
Tuscaloosa, AL 35401
Phone 205-348-0052 | Fax 205-348-5559
ramartin7@ua.edu | <http://nursing.ua.edu>

7 87. Quizlet's decision to continue to create and advertise new product without
8 changing its infringing labels and documents is evidence of Quizlet's intent to de-
9 prive Barkley of its property.

10 88. Barkley has a famous reputation that needs to avoid being associated with
11 Quizlet's products, but Quizlet's intentional conduct damages Barkley's reputation.

12 89. Quizlet has been unjustly enriched from Quizlet's infringements and other
13 alleged acts, Barkley, therefore, also is entitled to recover any unjust enrichment
14 caused by Quizlet's misappropriation of Barkley's property.

15 90. As a direct and proximate result of Quizlet's acts, Barkley has suffered and
16 will continue to suffer damages, including lost profits, in an amount subject to proof.

17 91. Quizlet's infringement and palming off was willful and designed to dam-
18 age Barkley. Therefore, Quizlet is liable for enhanced and punitive damages.

19 **FIFTH CLAIM FOR RELIEF - UNFAIR BUSINESS PRACTICES**

20 **[CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200]**

21 92. Barkley repeats the allegations of the previous paragraphs.

22 93. Quizlet engaged in unfair business practices under Cal. Bus. & Prof. Code
23 § 17200 by engaging in unlawful and unfair conduct, as described above.

24 94. Quizlet consciously designed Quizlet's product to imitate and copy Bar-
25 kley's copyright protected digital and print media to create a likelihood of confusion
26 and to blur the distinction between Quizlet's products and Barkley's well-known
27 company and famed nurse test prep materials.

28 95. Quizlet's acts caused Barkley to lose sales and profits from those sales.

96. Quizlet's trademark, trade dress and copyright infringement caused Bar-kley's lost sales and profits.

97. Barkley would not have suffered the same losses despite Quizlet's acts.

98. As a proximate and foreseeable result of Quizlet's violations of the California unfair competition law, Barkley suffered lost-sales damages in an amount presently unknown.

99. Quizlet received profits and revenue Barkley otherwise would have received by Quizlet's selling products that consumers mistakenly thought were made by Barkley.

100. Barkley's market share was also diminished because of Quizlet's conduct, which caused decreased sales and loss of profits. Quizlet's conduct also caused Barkley to suffer increased advertising costs.

101. By misappropriating and using Barkley's protected marks, trade dress, copyrights, label, artwork, design, and related protected works, Quizlet misrepresented and falsely described to the public the origin and source of the products and created a likelihood of confusion by ultimate purchasers as to both the source and sponsorship of these products.

102. Barkley has been and will continue to suffer damages and irreparable harm from sales lost to Quizlet because of Quizlet's unfair competition unless Quizlet is enjoined from engaging in further such acts.

REQUEST FOR RELIEF

WHEREFORE, Barkley respectfully prays for:

1. A judgment and order that Quizlet willfully: (A) infringed Barkley's trademarks in violation of 15 U.S.C. §1114, (B) infringed Barkley's trade dress in violation of the Lanham Act 43(a), (C) infringed Barkley's registered copyrights in violation of 17 U.S.C §§ 101 *et seq.*, (D) used false designations of origin and engaged in unlawful unfair competition in violation of 15 U.S.C § 1125(a), (E) engaged in unfair

1 competition under California common law, and (F) engaged in unfair business practices
2 in violation of Cal. Bus. & Prof. Code § 17200.

3 2. A judgment and order enjoining Quizlet and all Quizlet's affiliates, officers,
4 partners, authorized retailers and distributors, agents, employees, contractors, attorneys,
5 and all other persons acting in concert with Quizlet or at the direction of
6 Quizlet, during the pendency of this action and permanently thereafter from manufac-
7 turing, minting, labeling, designing, making, offering, delivering, displaying, ware-
8 housing, storing, transporting, promoting, advertising, publicizing, distributing, offer-
9 ing for sale, or selling any of Quizlet's products that bear Barkley's trademarks, trade
10 dress, and copyrights, including substantially similar or indistinguishable versions
11 thereof or therefrom, or any other marks, trade dress, designs, artwork, packaging,
12 bottles, labels, names, symbols, or logos that are likely to cause confusion or to cause
13 mistake or to deceive persons into the erroneous belief that any products emanating
14 from Quizlet's or any of Quizlet's commercial activities are sponsored, licensed, or
15 authorized by Barkley, or are connected or affiliated with Barkley;

16 3. A judgment and order that Quizlet and all Quizlet's affiliates, officers, part-
17 ners, authorized retailers and distributors, agents, employees, contractors, attorneys,
18 and all other persons acting in concert or at the direction of Quizlet, during the pen-
19 dency of this action and permanently thereafter that Quizlet must deliver to Barkley
20 for destruction all products, bottles, labels, files, labels graphics, artwork, designs,
21 promotional materials, business cards, signs, labels, advertisements, flyers, circulars,
22 all the foregoing including both digital and physical files and materials, and any other
23 items in any of Quizlet's possession, custody, or control bearing confusingly similar
24 copies of Barkley's marks, trade dress, and copyrights, and related labels and logos or
25 any simulation, reproduction, copy or colorable imitation thereof, and all plates,
26 molds, matrices, and other means of production under 15 U.S.C. § 1118.

27 4. A judgment and order that Quizlet and all Quizlet's affiliates, officers, part-
28 ners, authorized retailers and distributors, agents, employees, contractors, attorneys,

1 and all other persons acting in concert with Quizlet or at the direction of Quizlet, dur-
2 ing the pendency of this action and permanently thereafter be enjoined and restrained
3 from:

- 4 (a) using any reproduction, copy, or colorable imitation of the Barkley
5 marks, trade dress, copyrights, and related labels and logos, to identify any
6 goods or the rendering of any services not authorized by Barkley;
- 7 (b) engaging in any course of conduct likely to cause confusion, decep-
8 tion, or mistake, or injure Barkley's business reputation or weaken the distinc-
9 tive quality of the Barkley marks, trade dress, copyrights, and related labels
10 and logos;
- 11 (c) using a false description or representation including words or other
12 symbols falsely describing or representing Quizlet's unauthorized goods as be-
13 ing those of Barkley or sponsored by or associated with Barkley and from of-
14 fering such goods in commerce;
- 15 (d) further infringing the Barkley marks, trade dress, copyrights, and re-
16 lated labels and logos by manufacturing, producing, importing, distributing,
17 circulating, selling, marketing, offering for sale, advertising, promoting, dis-
18 playing or otherwise disposing of any products not authorized by Barkley bearing
19 any simulation, reproduction, copy or colorable imitation of the Barkley
20 marks, trade dress, copyrights, and related labels and logos;
- 21 (e) using any simulation, reproduction, copy or colorable imitation of the
22 Barkley marks, trade dress, copyrights, and in the promotion, advertisement,
23 display, sale, offering for sale, manufacture, production, circulation or distribu-
24 tion of any unauthorized products in such fashion as to relate or connect, or re-
25 late or connect, such products to Barkley, or to any goods sold, made, spon-
26 sored or approved by, or connected with Barkley;
- 27 (f) making any statement or representation, or using any false designa-
28 tion of origin or false description, or performing any act that can or is likely to

1 lead the trade or public, or individual members thereof, to believe that any
2 products manufactured, distributed, imported sold or offered for sale, or rented
3 by Quizlet is associated or connected with Barkley; or is sold, manufactured,
4 licensed, sponsored, approved or authorized by Barkley;

5 (g) engaging in any conduct infringing the Barkley marks, trade dress,
6 copyrights, and, of Barkley's rights in Barkley's marks, trade dress, copyrights,
7 and related labels, or constituting any weakening of Barkley's name, trade
8 dress, reputation, or goodwill;

9 (h) using or continuing to use Barkley marks, trade dress, copyrights,
10 and or trade names or trade dress or any variation thereof on the Internet (either
11 in the text of websites, as a domain name, or as a key word, search word, meta-
12 tag, or any part of the description of the site in any submission for registration
13 of any Internet site with a search engine or index) in any goods or services not
14 directly authorized by Barkley;

15 (i) hosting or acting as internet service provider for or operating any
16 websites that offer for sale any products bearing the Barkley marks, trade dress,
17 copyrights.

18 (j) secreting, destroying, altering, removing, or otherwise dealing with
19 the unauthorized products or any books or records that contain any information
20 relating to the importing, manufacturing, producing, distributing, circulating,
21 selling, marketing, offering for sale, advertising, promoting, or displaying of all
22 unauthorized products that infringe the Barkley marks, trade dress, copyrights;
23 and

24 (k) affecting assignments or transfers, forming new entities or associa-
25 tions, or utilizing any other device to circumvent or otherwise avoiding the pro-
26 hibitions in subparagraphs (a) through (j).

27 5. A judgment and order that Quizlet and all Quizlet's affiliates, officers, part-
28 ners, authorized retailers and distributors, agents, employees, contractors, attorneys,

1 and all other persons acting in concert with Quizlet or at the direction of Quizlet,
2 within ten days of judgment, take all steps necessary to remove from all websites it
3 owns or controls all text or other media offering for sale any merchandise bearing
4 copies of the Barkley marks, trade dress, copyrights, including substantially similar
5 versions thereof and therefrom.

6 6. A judgment and order granting an award of damages suffered by Barkley ac-
7 cording to proof at the time of trial.

8 7. A judgment and order that Quizlet account to Barkley for all profits earned
9 because of Quizlet's acts in violation of Barkley's rights and disgorgement of those
10 profits to Barkley.

11 8. A judgment and order granting an award of three times the amount of com-
12 pensatory damages and increased profits under 15 U.S.C. § 1117.

13 9. A judgment and order that Quizlet, on behalf of all Quizlet's affiliates, offic-
14 ers, partners, authorized retailers and distributors, agents, employees, contractors, at-
15 torneys, and all other persons acting in concert with Quizlet or at the direction of
16 Quizlet, within 30 days of judgment, file with this court and serve Barkley with a no-
17 tarized sworn statement under 15 U.S.C. § 1116(a) detailing the manner and form in
18 which Quizlet complied with the final judgment and order.

19 10. Directing such other relief as the Court may deem appropriate to prevent
20 the trade and public from deriving any erroneous impression that any products manu-
21 factured, sold, or otherwise circulated or promoted by Quizlet is authorized by Bar-
22 kley or related to Barkley's products.

23 11. A judgment and order that Quizlet pay Barkley's costs with reasonable at-
24 torneys and investigators fees and prejudgment interest under 15 U.S.C. § 1117.

25 12. A judgment and order granting an award of punitive damages to Barkley
26 for Quizlet's willful, malicious, and bad faith conduct under California common law.
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13. A judgment and order directing this Court retain jurisdiction to enable Bar-kley to apply to the Court at any time for further orders and interpretation or execu-tion of any order entered, for the modification of any such order, for the enforcement or compliance therewith and for the punishment of any violations.

14. Awarding Barkley such other and further just and proper relief.

July 16, 2024

/s/ Brian Tamsut

Brian Tamsut

SoCal IP Law Group LLP

Attorney for Plaintiff Barkley & Associates Inc.

JURY DEMAND

Plaintiff demands a trial by jury on all issues triable to a jury.

July 16, 2024

/s/ Brian Tamsut

Brian Tamsut

SoCal IP Law Group LLP

Attorney for Plaintiff Barkley & Associates
Inc.